

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2189 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KALABHAI DAHYABHAI BHIL

Versus

DISTRICT MAGISTRATE

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Appearance:

MR VIJAY H PATEL for Petitioner

MR UR BHATT AGP for Respondents

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/07/96

ORAL JUDGEMENT

The petitioner Kala Dahyabhai Bhil (Janghadia) has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, challenging the legality and validity of the order of detention dated 29.2.1996 passed under section 3(1) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'Act') by the District Magistrate, Kheda

(hereinafter referred to as the 'detaining authority').

In the grounds of detentin supplied to the detenu, the detaining authority has placed reliance on 4 pending trial cases registered by the Khambhat City Police Station for the offences under the provisions of Bombay Prohibition Act, wherein the detenu was arrested on 12.6.1995, 1.8.1995 and 6.8.1995 for the respective offences. Beside these cases, the detaining authority has also relied on two criminal cases registered at CR No. 53/94 and 59/94 for the offences under section 323, 332, 504 and 506(2) of the IPC for the respective cases. Over and above these two sets of proceedings, a further reliance is placed on the statements of four witnesses recorded on 10.8.1995 and verified by the concerned officer on 18.8.1995. Considering this material against the detenu, the detaining authority has recorded a finding that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is required to be allowed on the first contention advanced by Mr. Patel learned advocate appearing for the petition that there is inadvertent delay in passing the order of detention, I think that it is not necessary to refer to and/or to deal with the other contentions. As can be seen from the grounds of detention supplied to the detenu, the detenu was arrested in connection with the last prohibition case registered against him on 6.8.1995 and immediately after he released on bail, the concerned officer has recorded the statements of the witnesses on 10.8.1995. Thus, there is a delay of more than six months from the said date to the date of the passing of the impugned order of detention. The Supreme Court in the case of Pradeep Nilkanth Paturkar vs. S. Ramamurthi and others, reported in AIR 1994, SC 656, has quashed and set aside the order of detention by holding that the order of detention is vitiated on the ground of delay in passing the order of detention. In view of the same, the present petition is also required to be allowed by holding that the detention is vitiated on account of delay in passing the order of detention.

In the result, this petition is allowed. The

impugned order of detention dated 29.2.1996 is quashed and set aside. The detenu Kalabhai Dahyabhai Bhil (Janghadia) is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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